

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

West Contra Costa Sanitary Landfill  
One Parr Blvd. and Garden Tract  
Road  
Richmond, California 94801  
Respondent.

Identification Number CAD041844002

Docket HWCA 20061079

CONSENT ORDER

Health and Safety Code  
Section 25187

INTRODUCTION

1.1. The Department of Toxic Substances Control ("DTSC") and West Contra Costa Sanitary Landfill, Inc. ("WCCSL"), West County Landfill, Inc. and Republic Services, Inc. (jointly "Respondent") enter into this Consent Order and agree as follows:

1.2. Respondent owns the property located at One Parr Blvd., Richmond, California 94801, Identification Number CAD041844002 ("Site"). The property is identified as Contra Costa County Assessor's Parcel Numbers 408-140-008, 408-140-009 and 408-140-013. This property is commonly referred to as West Contra Costa Sanitary Landfill or West County Landfill.

1.3. Respondent owns and maintains a closed facility at the Site ("the Facility") that includes a Hazardous Waste Management Facility ("HWMF"), Leachate Treatment System ("LTS") and "E22-R Area" subject to a Hazardous Waste Facility Permit for Post-Closure issued by DTSC on July 9, 2003, Permit Number 03-SAC-10 ("Permit"). For purposes of this Consent Order, unless otherwise indicated, references to the HWMF shall also include the E22-R Area.

1.4. The HWMF is located near an un-named slough and San Pablo Creek, both of which are considered tributaries to San Pablo Bay.

1.5. If leachate were released from the HWMF, it could potentially enter the slough, San Pablo Creek and/or San Francisco Bay through groundwater or surface water flows.

1.6. Hazardous waste constituents of concern that have been detected in various groundwater monitoring wells outside of the HWMF include, but are not limited to, tert-butyl alcohol, 1,4-dioxane, tetrahydrofuran, diethyl ether, naphthalene, nickel, copper and lead.

1.7. On February 2, 2006, DTSC issued an Enforcement Order to West Contra Costa Sanitary Landfill, Inc., with an Imminent and Substantial Endangerment Determination, Docket HWCA 20061079 ("Enforcement Order") (Exhibit A incorporated herein). The Enforcement Order sets forth DTSC's assertion that Respondent failed to operate and maintain an adequate leachate extraction and treatment system to establish and maintain an inward hydraulic gradient within the HWMF, and that this has created the potential for releases of leachate, which is classified as RCRA hazardous waste (waste code F039), from the HWMF into the environment. The Enforcement Order also sets forth DTSC's assertion that Respondent violated Health and Safety Code section 25202(a) by failing to comply with certain Permit requirements.

1.8. A dispute exists between the Parties regarding the allegations in the Enforcement Order. Respondents do not admit the allegations of the Enforcement Order, and filed an Answer and a Request for Hearing regarding the Enforcement Order. The Parties agree to enter into this Consent Order without admission of fault or wrongdoing on the part of Respondent, and this Consent Order shall not be read to imply any such fault or wrongdoing on the part of Respondent.

1.9. The Parties enter into this Consent Order to avoid the expense of litigation and to carry out promptly the compliance actions described below.

1.10. Jurisdiction exists to issue this Consent Order pursuant to Health and Safety Code section 25187.

1.11. As of the effective date of this Consent Order, the requirements of this Consent Order shall supersede and replace the requirements set forth in the Enforcement Order.

1.10. The terms used in this Consent Order are as defined in the California Health and Safety Code and California Code of Regulations, title 22, section 66260.10, except as otherwise provided.

1.11. Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order, including any portions of this Consent Order incorporated by reference.

1.12. Pursuant to the agreement of the Parties to enter into this Consent Order in lieu of a full Hearing on the merits as a result of Respondent's Request for Hearing, Respondent by entering into this Consent Order hereby waives any right to a hearing on the matters covered in the Enforcement Order.

## PROJECT COORDINATORS

2. The Project Coordinators for DTSC and Respondent identified below are responsible for overseeing the implementation of this Consent Order and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Order shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven days prior written notice to the other party.

DTSC's Project Coordinator is:

Peter Bailey  
8800 Cal Center Drive  
Sacramento, CA 95826  
[pbailey@dtsc.ca.gov](mailto:pbailey@dtsc.ca.gov)  
(916) 255-3602  
(916) 255-3596 (fax)

Respondent's Project Coordinator is:

Dennis Carvalho  
1 Parr Blvd., Building D  
Richmond, CA 94801  
[CarvalhoD@repsrv.com](mailto:CarvalhoD@repsrv.com)  
(510) 773-7466

## WORK TO BE PERFORMED

3. Respondent agrees to perform the work required by this Consent Order in accordance with all applicable local, state and federal laws and their implementing regulations, including but not limited to requirements to obtain permits and to assure worker safety.

## SCHEDULE FOR COMPLIANCE

4.1. On December 1, 2006, Respondent completed construction and began operation of all equipment identified as medium term upgrades in Exhibit B incorporated herein.

4.2. Such equipment was constructed and operated in compliance with all of the following: the terms and conditions of the Temporary Authorization for Leachate Treatment System ("LTS") Modifications dated May 23, 2006 ("Temporary Authorization"); Respondent's Request for Temporary Authorization dated May 5, 2006; the terms set out in Respondent's May 19, 2006 email to DTSC re: "WCL Request for Temporary Authorization" and Respondent's Workplan for Improving Leachate Treatment Maintenance Facility dated March 10, 2006. DTSC hereby authorizes the

continued use of equipment identified in the Temporary Authorization, along with the larger tank capacities, now identified in revised Table 1, attached as Exhibit B.

4.3. Respondent has conducted closure activities as specified in the Closure Plan, Soil and Groundwater Assessment Workplan dated October 16, 2006 ("Closure Plan").

4.4. Respondent shall submit to DTSC the design for a concrete pad for the final LTS by October 1, 2007. Respondent shall construct the concrete pad upon DTSC approval of the design and issuance of a building permit by the City of Richmond, after closure activities for the former LTS are approved.

Respondent shall submit a transition plan to DTSC as part of the permit application that details the transition from operation of the medium term LTS to the final LTS. Respondent's transition plan shall propose the length of a transition period, not to exceed 45 days, during which Respondent shall not be subject to the requirements of Paragraphs 4.14 and 4.18.

4.5. Respondent submitted to DTSC on November 23, 2006, a Post-closure Permit application for all post-closure activities on the site regulated by DTSC. Respondent agrees to pay the statutory fee for a new post-closure permit of \$50,714.00 for the processing of the permit application. DTSC issued a Notice of Deficiency for the Post-closure Permit application on August 7, 2007. Respondent agrees to timely respond to the provisions of the NOD.

Respondent's current Post-closure Permit authorizes repairs and replacement of existing leachate extraction wells, piezometers, associated pumps and conveyance systems and construction of new extraction wells and piezometers, if reviewed and approved by DTSC, without the need for a Post-closure Permit modification. It is DTSC's intent that the new Post-closure Permit will do the same.

4.6. Within 60 days of the effective date of the Consent Order, Respondent shall submit to DTSC for review and approval a performance evaluation plan and an O&M plan for the Medium Term LTS. The performance evaluation plan shall detail how Respondent will evaluate the efficiency of the LTS to treat all constituents of concern that have been identified in sampling of all phases and from all areas of the HWMF, and detail a schedule for initial and ongoing evaluation of the performance of the Medium Term LTS. The O&M plan will include all inspection, maintenance protocols, and procedures to ensure continued efficient operation of the Medium Term LTS. The O&M plan will become effective immediately upon DTSC review and approval, and continue to be effective until the Final LTS specifications and O&M plan in the Post-closure Permit application are approved.

4.7. By September 15, 2006, Respondent installed pneumatic pumps and new controllers on all wells that were unable to extract leachate and/or monitor existing leachate extraction, in the HWMF and E22-R Area. After review of the as-built plans for this equipment required under paragraph 4.9, DTSC will notify Respondent if any further

upgrades or retrofits are necessary, and Respondent shall complete those upgrades or retrofits in compliance with any reasonable schedule established by DTSC.

4.8. By November 15, 2006, Respondent completed the following actions identified in the Work Plan for Improving Leachate Management Facility, Addendum-3, Plan for Improving Leachate Extraction and Conveyance Systems, dated May 2, 2006 ("Leachate Extraction Plan") (Exhibit C incorporated herein), as amended in Section 9.2 and Appendix C of the July 2006 Monthly Compliance Report (Exhibit D incorporated herein):

- (1) installed the 9 new leachate extraction wells identified in Appendix C of the July 2006 Monthly Compliance Report (Exhibit D);
- (2) monitoring the 6 new/replacement piezometers; operating all flow meters, well heads and leachate conveyance system upgrades; and
- (3) converted wells EW-3, EW-7 and EW-13 in the E-22R Area to extraction wells and converted well EW-1A to a piezometer;

Respondent submitted as-built plans for the above new wells and equipment, and the retrofits to existing wells addressed in paragraph 4.7, as well as schematics showing the general construction materials and methods for new conveyance system piping, to DTSC on December 15, 2006. Additional conveyance system upgrades will occur in 2008 and the as-built plans for those upgrades shall be submitted to DTSC within 30 days of completion.

4.9. The leachate conveyance system upgrades specified above in paragraph 4.8 shall include a new leachate conveyance system that meets the requirements of Title 22, Cal. Code of Regulations, section 66264.193.

4.10. Respondent shall:

- (1) comply with all terms and conditions of DTSC's Conditional Approval of the Leachate Extraction Plan dated May 26, 2006 (Exhibit E);
- (2) comply with all Operations and Maintenance procedures in the Leachate Extraction Plan (pages 23–26); and
- (3) take all actions identified under "Extraction System Performance Evaluations" and "Hydrogeologic Evaluations" in the Leachate Extraction Plan (pages 27-30), collect the identified data for at least 12 months after installation of the new extraction wells identified in the Leachate Extraction Plan, and submit such data to DTSC in the Monthly Reports.

DTSC has not approved any schedules in Section 8.5 or Figure 9 of the Leachate Extraction Plan or in Respondents' Request For Temporary Authorization. The deadlines set forth in this Consent Order are controlling.

4.11. By October 1, 2007, Respondent shall submit to DTSC a plan for ongoing management of storm water to: (1) minimize surface water run-on intrusion of stormwater into the HWMF (including the Corrective Action Management Unit (CAMU)), (2) minimize co-mingling of surface water run-on and managed liquids, (3) address how

Respondent will manage liquids during rainy seasons in order to continue pumping and treating leachate to achieve and maintain an inward gradient; and (4) address how Respondent will minimize accumulation of liquids in the CAMU East during rainy seasons. This plan shall be incorporated into the facility's permit application for the facility.

4.12. Respondent must meet all gradient standards specified in Table A across the slurry wall surrounding the HWMF and across the outer slurry wall at the E-22R Area. Leachate levels in the piezometers surrounding the HWMF and the E22-R area shall determine compliance with this requirement. The required gradient standards governing the paired monitoring wells on either side of the slurry walls are specified in Table A. Table A sets forth the specific piezometer pairs and the gradient standard to be used to determine compliance with this Consent Order:

Table A

Pair Number and Area	Inward well	Outward well	Required Inward gradient differential
1 CAMU	PZ-14	PZ-15	Compliance with CAMU Plan*
2 HWMF	LW90-3	E-62	1 Foot
3 HWMF	PZ-16	PZ-17	1 Foot
4 HWMF	LEW91-2	E-63	1 Foot
5 HWMF	PZ-18	E-64	1 Foot
6 HWMF	PZ-30	PZ-31	1 Foot
7 Between HWMF and E-22R	LEW97-2	PZ-33	0 (neutral gradient)
8 Between HWMF and E-22R	PZ-4	PZ-3	0 (neutral gradient)
9 HWMF	PZ-6	PZ-5	1 Foot
10 HWMF	LEW97-9	PZ-29	1 Foot
11 HWMF	PZ-8	PZ-7	1 Foot
12 HWMF	PZ-10	PZ-11	1 Foot
13 HWMF	PZ-12	PZ-13	1 Foot
14 HWMF	LW90-1	New PZ between PZ-13 and PZ-15***	1 Foot
15 E-22R	EW-15	M-47	1 Foot**
16 E-22R	EW-2P	M-70	1 Foot
17 E-22R	EW-10	E-34R	1 Foot **

\* The CAMU Area Wellfield Plan is attached to this Consent order as Exhibit F.

\*\* These wells are tidally influenced; hence the compliance set point for the outward well elevation is set is based on mean tide. See item 4.14 below.

\*\*\* This new piezometer will be installed and operational by October 31, 2007.

4.13. At all times until the applicable gradient standard in Table A is established throughout the entire HWMF, Respondent shall use its best efforts to

extract the maximum feasible amount of leachate from the extraction wells in areas of the HWMF that have not met the applicable gradient standard, regardless of available onsite storage or treatment capacity. If leachate storage capacity is not available onsite, Respondent shall ship leachate offsite to an authorized treatment, storage, or disposal facility. However, Respondent shall not be required to extract more than 28,600 gallons per day of leachate from the HWMF and E22-R combined, without 60 days written notice from DTSC.

4.14. On April 20, 2007, Respondent submitted to DTSC an evaluation of the wellfield performance for the leachate extraction field for the HWMF. This report evaluated the hydraulic gradient across the HWMF, excluding the CAMU area and E-22R Area. The evaluation presented a summary indicating certain well pairs in the HWMF area would not meet all gradient standards specified in Table A by June 1, 2007. The Respondent submitted a workplan on June 1, 2007, proposing actions that will meet all gradient standards specified in all well pairs (with the exception of pairs 1, 7, 8, 15 and 17) associated with the HWMF and the E-22R Area, by June 1, 2008. Because the groundwater surface elevations in the outboard wells in pairs 15 and 17 are influenced by tidal fluctuations, an alternate site-specific water level measurement datum is required. By March 31, 2008, the Respondent shall submit to DTSC a proposal for compliance set points for the outboard well elevation in pairs 15 and 17 identified in Table A. The proposal shall also include the status of and a schedule for achieving all gradient standards and leachate containment for well pairs 15 and 17.

4.15. By March 31, 2008, Respondent shall submit to DTSC an evaluation of the wellfield performance for the leachate extraction field for well pairs 1, 7, and 8. This report shall evaluate the hydraulic gradient across the E-22R and the CAMU and the area between the HWMF and E-22 R area and present a summary and conclusion on whether compliance with the gradient standards for well pairs 1, 7, and 8 specified in Table A will be achieved by June 1, 2008. If the gradient standard for any of these well pairs will not be achieved by June 1, 2008, the Respondent shall submit a workplan by June 1, 2008, to propose actions necessary to meet the applicable gradient standards by June 1, 2009.

4.16. If Respondent believes that it is impracticable to comply with the gradient standards listed in Table A, mentioned in 4.14 and 4.15, at any area of the HWMF, CAMU or E-22R Area, Respondent shall submit to DTSC a workplan for an alternate method for demonstrating containment in that area. DTSC will determine if it agrees with Respondent's alternate method and if the workplan is acceptable. Respondent shall implement the actions in the workplans referenced above in accordance with any final terms and conditions of DTSC's written approval of the workplan, including any reasonable schedule established by DTSC.

4.17. After installation and evaluation of the new leachate extraction wells identified in the June 1, 2007 workplan, DTSC may at any time direct Respondent to submit a workplan within 45 days for further actions to meet all gradient standards specified in Table A or to install additional paired monitoring wells on each side of the slurry wall to accurately determine the existing gradient. If a plan is requested, Respondent shall submit the workplan within 45 days of receipt of DTSC's request and

shall implement the actions included in the workplan in accordance with the final terms and conditions of DTSC's written approval of the workplan, including any reasonable schedule established by DTSC.

4.18. After the gradient standards set forth in Table A are satisfied, Respondent shall continue to extract the volume of leachate from the HWMF and E-22R Area that is necessary to maintain compliance with the gradient standards regardless of available onsite storage or treatment capacity. If leachate storage capacity is not available onsite, Respondent shall ship leachate offsite to an authorized treatment, storage or disposal facility. However, Respondent shall not be required to extract more than 28,600 gallons per day of leachate from the HWMF and E22-R combined, without 60 days written notice from DTSC.

4.19. Respondent shall collect hydraulic head data from each pair of piezometers identified in Table A on either side of the slurry wall on the following schedule: weekly measurements of well pairs until the applicable gradient standard is met and maintained for two months in that well pair; after two months, measurements every two weeks for six months, thereafter, monthly measurements for a year; after a year measurements may be taken in accordance with the requirements of the Permit. If any consecutive measurements document that the gradient standards in Table A are not met in a well pair measurement, Respondent shall return to weekly measurements in that non compliant pair of piezometers identified in Table A until compliance with the gradient standards for that pair is established and maintained for two months, followed by measurements every two weeks for six months and monthly measurements for a year, then returning to the schedule in the Permit. Respondent shall include this data in the Monthly Reports.

4.20. Respondent shall on each day record in a daily operating record, for each 24 hour period, the amount of leachate collected from each extraction well, the cumulative amount of leachate sent to the LTS, and the amount of treated leachate discharged to Wastewater District. Respondent shall include this data in the Monthly Reports. Respondent shall reconcile these records on a monthly basis to ensure the volume extracted is within 10% of the treated volume. Respondent shall explain in the Report the reason for the differences that exceed 10%, if known, and if not known, Respondent shall propose and implement actions to determine and address the reason for the differences. Respondent shall also record and maintain all operation records pursuant to its Permit requirements.

4.21. For all new and existing wells at the HWMF and E-22R area, Respondent shall refurbish, repair or construct necessary upgrades to the well, pump, flow meter, piezometer and/or associated conveyance system equipment that is not functioning properly within 14 days of the discovery of such operational problems. If additional time is required the Respondent shall notify DTSC in writing of the reason additional time is required, and the amount of additional time required. Respondent shall record in the daily operating log and the Monthly Reports the first date of such operational problem, identify the well involved and nature of the problem, and record the date of refurbishment, repair or upgrade.

4.22. Respondent shall submit to DTSC a monthly Compliance Report ("Monthly Report") beginning one month after the effective date of this Consent Order, and continuing for six months after the Respondent has demonstrated an inward gradient. The Monthly Report shall include the status of all activities required in this Consent Order, all data that Respondent is required to collect pursuant to this Consent Order, and the as-built plans for all equipment installed pursuant to this Consent Order. After six months, Respondent shall continue to submit a Monthly Report containing all weekly, bi-weekly, or monthly hydraulic data required pursuant to paragraph 4.19 above. When the collection of weekly, bi-weekly or monthly hydraulic data required by paragraph 4.19 is completed, Respondent shall submit the monthly hydraulic data as required by the Permit.

4.23. On July 9, 2007, DTSC approved Respondent's CAMU Liner Characterization workplan that documents all damage observed and repairs conducted in 2006 for both the East and West CAMU. The workplan also describes Respondent's proposal to adequately characterize the entire geomembrane and clay liners beneath both the East and West CAMU. This workplan includes a schedule and description of all work that will be implemented after the characterization of the liners so they meet California Code of Regulations, title 22, section 66264.552 design and construction requirements. Respondent shall implement the actions in accordance with the schedule in the approved workplan.

In addition to implementing the approved workplan, Respondent shall submit a proposal for methods of disposal of waste within the CAMU, and also include it as part of its response to the Post Closure Permit NOD.

4.24. By December 1, 2007, Respondent shall submit a workplan for adding secondary containment, meeting the requirements of California Code of Regulations, Title 22, section 66264.193(b) – (f), for the three 16,500 gallon treated leachate storage tanks and for the three 72,000 gallon treated leachate storage tanks, including any appropriate request for temporary storage; however, if Respondent determines it is not feasible to provide such secondary containment for one or more of the existing tanks, Respondent shall submit a proposal for replacement of such tank(s) (including secondary containment) as part of the permit application. DTSC shall review and comment on the secondary containment workplan within 30 days. Respondent shall complete installation of the secondary containment proposed in the workplan by October 1, 2008.

#### ENDANGERMENT DURING IMPLEMENTATION

5. In the event that DTSC determines based on substantial evidence that any circumstance or activity (whether or not pursued in compliance with this Consent Order) is creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, DTSC may issue a Stop Work Order directing Respondent to stop further implementation for such period of time as needed to abate the endangerment. Respondent may dispute the determination of endangerment by an action for Administrative Mandamus filed in the Superior Court of the State of California after exhausting any applicable administrative

remedies. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order. If at any time Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, Respondent shall notify DTSC Project Coordinators orally within 48 hours of discovery and notify DTSC in writing within 10 days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human health and/or the environment.

### DTSC APPROVAL

6.1. Respondent shall revise any workplan, report, specification, or Schedule submitted pursuant to this Consent Order to address DTSC's written comments. Respondent shall submit to DTSC any revised documents by a reasonable due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

6.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

6.3. Any DTSC-approved workplan, report, specification, or schedule required under this Consent Order shall be deemed incorporated into this Consent Order.

6.4. All approvals and decisions of DTSC made regarding submittals and notifications shall be communicated to Respondent in writing by one of the DTSC Project Coordinators. Oral advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

6.5. The need for, and disputes concerning, revisions requested by DTSC are subject to the Dispute Resolution procedures specified in this Consent Order.

### SUBMITTALS

7.1. Any plan, report or other document submitted by Respondent pursuant to this Consent Order shall be signed and certified by the project coordinator, a responsible corporate officer, or another duly authorized representative.

7.2. Respondent shall provide DTSC an electronic copy of all documents, including but not limited to, workplans, reports, and correspondence.

### PROPOSED CONTRACTOR/CONSULTANT

8. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site management. Respondent's

contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities.

#### ADDITIONAL WORK

9. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved workplans. DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within 14 days after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit to DTSC a workplan for the additional work. Such workplan shall be submitted to DTSC within 30 days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a workplan, Respondent shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the Dispute Resolution procedures specified in this Consent Order.

#### QUALITY ASSURANCE

10.1. All sampling and analyses performed by Respondent under this Consent Order shall follow applicable DTSC and U.S. EPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

10.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable workplans.

#### SAMPLING AND DATA/DOCUMENT AVAILABILITY

11.1. Respondent shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Order.

11.2. Respondent shall notify DTSC in writing at least seven days prior to beginning each separate phase of field work approved under any workplan required by this Consent Order. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

11.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Order.

### ACCESS

12. Subject to the Facility's security and health and safety procedures, Respondent agrees to provide DTSC and its representatives access at all reasonable times to the Facility and any off-site property to which access is required for implementation of this Consent Order and shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Order and that are within the possession or under the control of Respondent or its contractors or consultants.

### RECORD PRESERVATION

13.1. Respondent shall retain all data, records, and documents that relate in any way to the performance of this Consent Order or to hazardous waste management and/or disposal at the Facility during the pendency of this Consent Order, and thereafter in accordance with the requirements of Title 22, California Code of Regulations, section 66270.30(j). Respondent shall notify DTSC in writing 90 days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Order and shall be addressed to:

Chief  
Northern California Branch  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, CA 94710-2721

13.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Order, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Consent Order.

13.3. All documents pertaining to this Consent Order shall be stored in a central location at the Facility, or at a location otherwise agreed to by the parties, to afford easy access by DTSC and its representatives.

### DISPUTE RESOLUTION

14.1. The Parties agree in good faith to use their best efforts to resolve all

Disputes informally. The Parties agree that except with respect to disputes arising under paragraph 5. "Endangerment During Implementation", the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Order. If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

14.2. If Respondent disagrees with any written decision by DTSC pursuant to this Consent Order, including but not limited to approvals, disapprovals, directives, schedules, or actions that DTSC determines are required under paragraphs 4.1 through 4.24 of this Consent Order, Respondent's Project Coordinator shall orally notify DTSC's Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

14.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may request review by the Chief, Northern California Permitting and Corrective Action Branch, Hazardous Waste Management Program, Department of Toxic Substances Control, as a matter of right by placing its objection(s) in writing. Respondent's written objection must be forwarded to Chief, Northern California Permitting and Corrective Action Branch, with a copy to DTSC's Project Coordinator. The written objection must be mailed to the Branch Chief within 14 days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

14.4. DTSC and Respondent shall have 14 days from DTSC's receipt of Respondent's written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, Respondent may meet or confer with DTSC to discuss the dispute.

14.5. After the formal discussion period, DTSC will provide Respondent with its written Final Decision on the dispute. DTSC's written Final Decision will reflect any agreements reached during the formal discussion period, and identify any remaining areas of disagreement, DTSC's decision, and the reasons for the decision, and be signed by the Branch Chief or his/her designee. Respondent may appeal DTSC's written Final Decision by an action for Administrative Mandamus filed in the Superior Court of the State of California.

14.6. During the pendency of all Dispute Resolution Procedures set forth above, the time periods for completion of work required under this Consent Order that are affected by such dispute shall be extended for the period of time necessary to resolve the dispute and/or obtain a written Final Decision from the Branch Chief. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Order which is not subject to Dispute Resolution.

#### RESERVATION OF RIGHTS

15.1. DTSC reserves all of its statutory, regulatory and common law powers, authorities, rights, and/or remedies, which may pertain to Respondent's failure

to comply with any of the requirements of this Consent Order. Payment of penalties and costs as provided below and compliance with the requirements of this Order resolves Respondent's liability for violations of the HWCL, its implementing regulations and/or the Permit at the Site that are known to DTSC on August 31, 2007 or were disclosed in facility records that Respondent provided to DTSC before August 31, 2007. Nothing herein prevents DTSC from exercising its authority to seek relief, or to exercise any of its statutory, regulatory and common law powers, including but not limited to imposition of penalties: for violations discovered by DTSC after the Effective Date of this Order even if the violation had occurred before the Effective Date; to require corrective action to address a release of hazardous waste or a hazardous waste constituent to the environment after the Effective Date of this Order; or to address an imminent and substantial endangerment that is discovered after the Effective Date of this Order. Except as provided herein, this Consent Order shall not be construed as a covenant not to sue, release, waiver, or limitation on any powers, authorities, rights, or remedies, civil or criminal, that DTSC or Respondent may have under any permits, laws, regulations or common law.

15.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Order and to request that Respondent perform additional tasks.

15.3. This Consent Order is not intended to be nor shall it be construed to be a permit. This Consent Order is not a substitute for, and does not preclude DTSC from requiring, any hazardous waste facility permit, post closure permit, closure plan or post closure plan. The parties acknowledge and agree that DTSC's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with the Health and Safety Code or any other applicable local, state, or federal law or regulation.

#### PAYMENT OF PENALTIES AND COSTS

16. Respondent shall pay \$725,000 to settle this action, as described below:

16.1. Within 30 days of the effective date of this Consent Order, Respondent shall make the following payments:

a) \$325,000 penalties to DTSC, with payment made out to "Department of Toxic Substances Control;"

b) \$200,000 to DTSC for reimbursement of past enforcement costs, with payment made out to "Department of Toxic Substances Control;"

c) \$50,000 to the Environmental Protection Prosecution Fund (Fund Number 0942152);

d) \$50,000 to the Environmental Education Account of the California Environmental Protection Agency, with payment made out to "Environmental Education Account (Fund 8020)," and

e) \$50,000 to The Watershed Project to be used for the activities described in Exhibit G.

16.2. Payments for items a) and b) in section 16.1. above shall be delivered with a copy of the attached payment voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21<sup>st</sup> Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

16.3. Payments for items c) and d) in section 16.1. above shall be delivered with a copy of this Consent Order to:

Mr. James Grace  
Office of Legal Affairs  
Department of Toxic Substances Control  
1001 I Street, 25<sup>th</sup> Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

16.4. Copies of all payments shall simultaneously be sent to:

Mr. Paul S. Kewin  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, CA 95826-3628

Sandra Goldberg  
Office of the Attorney General  
1515 Clay Street, 20<sup>th</sup> Floor  
Oakland, CA 94612-0550

16.5. The remaining \$50,000 of the settlement amount is available as a credit against penalties for carrying out a supplemental environmental project (SEP), as described in Exhibit H, which is fully incorporated into this Order, which shall consist of two electronic waste collection events at the Integrated Resource Recovery Facility at 101 Pittsburg Avenue, North Richmond. The SEP shall be completed within one year of the effective date of this Consent Order. The documented costs incurred by Respondent for the SEP shall be submitted to DTSC within 30 days of completion for DTSC review and approval. If Respondent's documented costs do not total \$50,000,

Respondent shall pay the shortfall to the Department as an additional penalty within 45 days of the Department's notice to Respondent of the shortfall amount. If Respondent's documented costs exceed \$50,000, the excess amount shall not be considered as an additional credit to the total settlement amount.

16.6. Respondent shall disclose to entities that sponsor, collaborate, or participate in carrying out the SEP identified above that Respondent's contribution and participation is required by a settlement with the Department of an enforcement action. The disclosure shall be in writing and included in any agreement with a sponsoring, collaborating, or participating entity.

16.7. If Respondent should publicize this SEP, or the contributions in section 16.1., c) and d) above, Respondent agrees that it will state in a prominent manner that the SEP or contribution was undertaken as part of the settlement of an enforcement action with the Department of Toxic Substances Control.

16.8. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

#### REIMBURSEMENT OF DTSC'S IMPLEMENTATION COSTS

17.1. Respondent shall pay DTSC's costs incurred in connection with the implementation of this Consent Order pursuant to the terms of Chapter 6.66 of Division 20 of the California Health and Safety Code.

17.2. An estimate of DTSC's costs is attached as Exhibit I showing the amount of \$ 66,646. It is understood by the parties that this amount is only a cost estimate for the activities shown on Exhibit I and it may differ from the actual costs incurred by DTSC in overseeing these activities or in implementing this Consent Order. DTSC will provide additional cost estimates to Respondent as the work progresses under the Consent Order.

17.3. Respondent shall make an advance payment to DTSC in the amount of \$10,000 within 30 days of the effective date of this Consent Order. If after full implementation the advance payment exceeds DTSC's costs, DTSC will refund the balance within 120 days.

17.4. DTSC will provide Respondent with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the activities, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within 60 days of the date of the billing statement, the amount is subject to interest as provided by Health and Safety Code section 25360.1.

17.5. DTSC will retain all costs records associated with the work performed under this Consent Order as required by state law. DTSC will make all

documents that support the DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

17.6. Any dispute concerning DTSC's costs incurred pursuant to this Consent Order is subject to the Dispute Resolution provisions of this Consent Order. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

17.7. All payments under this section shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Department of Toxic Substances Control  
Accounting Office  
P. O. Box 806  
Sacramento, California 95812-0806

17.8. All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Consent Order. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

#### GOVERNMENT LIABILITIES

18. The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 23, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

#### EXTENSIONS

19.1. If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

19.2. If DTSC determines that good cause exists for an extension, it will grant the request and specify in writing a new schedule or deadline.

#### MODIFICATION

20.1. This Consent Order may be modified by mutual agreement of the parties. In order to be valid and effective, any agreed modification shall be in writing, shall be signed by both parties, shall have as its effective date the date on which it is signed by all the parties, and shall be deemed incorporated into this Consent Order.

20.2. Any requests for revision of this Consent Order, including, but not limited to, an approved workplan requirement must be in writing. Such requests must

be timely and provide justification for any proposed revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Chief, Northern California Branch, Enforcement & Emergency Response Program, Department of Toxic Substances Control, or his or her designee. Any approved revision shall be incorporated by reference into this Consent Order.

#### INTEGRATION

21. This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided herein. There are no oral agreements of any type between the Parties that are not reflected in the terms of this Consent Order.

#### PARTIES BOUND

22. This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary corporations, and upon DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

#### EFFECTIVE DATE

23. The effective date of this Consent Order shall be the date on which this Consent Order is signed by all the parties. Except as otherwise specified, "days" means calendar days.

#### SIGNATORIES

24. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Order.

DATE: September 26, 2007 BY: Original signed by Dennis F. Carvalho  
Representing West Contra Costa  
Sanitary Landfill, Inc.  
Dennis F. Carvalho, General Manager

DATE: September 26, 2007 BY: Original signed by Kevin Finn  
Representing Republic Services, Inc.  
Kevin Finn, Area President

DATE: September 25, 2007 BY: Original signed by Gale Filter  
Gale Filter, Deputy Director  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control